

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to supplemental nutrition assistance program

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 217.6 and 7 CFR 273.16(f).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6 and 7 CFR 273.16(f).

Purpose and Summary

The Department has changed the formal name of Iowa’s food assistance program from Food Assistance to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program and to alleviate confusion around food benefits that are available.

Federal regulations give states the option of establishing procedures to allow an individual accused of an intentional SNAP violation to waive the individual’s right to an administrative disqualification hearing. With the recommendation of the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), the Department has decided to take advantage of this option. The Department is responsible for investigating any case of alleged intentional program violation. The Department will notify a SNAP household when the Department submits a referral to determine whether an individual of that household intentionally violated SNAP rules. Currently, the Department’s only options to ensure appropriate cases are acted upon are through an administrative disqualification hearing or through criminal prosecution by a court of an appropriate jurisdiction.

These amendments give an individual who is suspected of an intentional program violation an opportunity to waive the individual’s right to an administrative disqualification hearing, if the individual so chooses, on Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

If the individual chooses to sign the form, the member will be disqualified from participating in SNAP for a specified time and agrees to repay any overpayment associated with the violation. No administrative disqualification hearing will be held. The same disqualification penalty will be imposed if the individual chooses to give up the right to an administrative disqualification hearing and signs the waiver form or if the individual participates in the hearing and is found to have committed an intentional program violation by an administrative law judge.

No further administrative appeal procedure exists after an individual waives the individual’s right to an administrative disqualification hearing and a disqualification penalty has been imposed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as **ARC 5549C**. One organization provided written comments on the proposed amendments.

Comment 1:

The respondent believes the proposed change inadequately incorporates the directives in the Code of Federal Regulations (CFR) Chapter 7 Section 273.16 that are meant to provide participants with

protection from erroneous deprivation of critical benefits. The respondent requested that the regulation explicitly incorporate language from 7 CFR 273.16.

Response 1:

Rule 441—7.2(17A) already indicates that to the extent that federal law related to a specific program is more specific than the rules in Chapter 7, the program-specific federal or state law shall control; the rule also provides a reference to the federal code citation for SNAP. However, to protect clients and their fundamental human need to access basic nutrition, the introductory paragraph of rule 441—7.19(17A) in Item 5 has been revised to read as follows:

“441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual’s right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f).”

Comment 2:

Proposed rule 441—7.19(17A) mentions Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing. However, the respondent noted the rule does not contain any information about what states are required to include in such a form or under which circumstances the Department can issue such a notice to a SNAP participant.

The respondent requested that the proposed rule make it entirely clear that the Department is required to provide all of the criteria required by 7 CFR 273.16(e) and (f) in the waiver form. The respondent also suggested the rules provide that the form say, prominently and in bold, that the form need not be returned in order to get a hearing on the allegations of fraud.

Response 2:

Federal regulations at 7 CFR 273.16(f)(1) provide the requirements of what must be in the written notification sent to the individual to inform the individual of the possibility of waiving the administrative disqualification hearing. It is not necessary to repeat the requirements within the rules and is covered by existing rule 441—7.2(17A), which indicates that the program-specific federal law shall control and provides a reference to the federal code citation for SNAP. Also, the USDA FNS has reviewed Iowa’s Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, and has approved the form since it met the stated federal requirements.

No change was made based on this comment.

Comment 3:

The respondent requested that a statement be added to the rules indicating the Department must ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual’s household and that such evidence warrants scheduling a disqualification hearing. The respondent stated that this review must be conducted before the appeals section issues Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

Response 3:

The Department already utilizes an established procedure whereby a referral for an administrative disqualification hearing is reviewed by someone other than the eligibility worker prior to submission to the appeals section. This practice already exists, and the Department does not include procedural processes in the rules.

No change was made based on this comment.

Comment 4:

Federal regulations require that intentional program violation waivers be sent by mail to prevent a situation where a fraud investigator could meet with an individual in person and pressure the individual to sign the waiver. The respondent suggested that the rules explicitly provide that Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, will be sent by mail only.

Response 4:

Based on the respondent’s comment, subrule 7.19(1) in Item 5 has been revised to read as follows:

“**7.19(1)** When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.”

Comments on Form 470-5530:

When the respondent provided comments on the rules, the respondent had not yet reviewed Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing. Some of the comments related to the content of the form itself and not specifically to the context of the rules. A copy of the form and the form’s instructions were shared with the respondent, and subsequent comments were provided by the respondent on the form.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on July 8, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—7.1(17A)**, definitions of “Assistance program,” “Good cause” and “Intentional program violation,” as follows:

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, ~~food assistance~~ the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (hawki) program, foster care, adoption, and aftercare services.

“*Good cause*” means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or ~~in attendance~~ failure to attend, for purposes of subrules 7.4(3) and 7.9(2).

“*Intentional program violation*” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the ~~Food and Nutrition Act of 2008~~ Supplemental Nutrition Assistance Program (SNAP), ~~food assistance~~

~~program~~ SNAP regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits or an electronic benefit transfer (EBT) card. An intentional program violation is determined through a ~~food-assistance~~ SNAP administrative disqualification hearing. ~~The hearing~~, a court conviction, or when an individual signs and returns Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

ITEM 2. Amend rule 441—7.2(17A) as follows:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, ~~food-assistance~~ Supplemental Nutrition Assistance Program (SNAP) appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Amend paragraph 7.4(3)“a” as follows:

a. ~~Food-assistance~~ Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program and autism support program. For appeals pertaining to ~~food-assistance~~ Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

ITEM 4. Amend paragraph 7.4(3)“i” as follows:

i. Assistance program overpayments. For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (hawki), family planning program or ~~food-assistance~~ Supplemental Nutrition Assistance Program (SNAP) overpayments, the party-in-interest’s right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

ITEM 5. Adopt the following new rule 441—7.19(17A):

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual’s right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f).

7.19(1) When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

7.19(2) By signing Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, the individual:

- a.* Waives the right to an administrative disqualification hearing;
- b.* Consents to the SNAP disqualification period designated on Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and
- c.* Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

7.19(3) An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, to the appeals section within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification, unless the individual shows the notification was not received within the five-day period.

7.19(4) An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

7.19(5) No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.